86-878

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

NO.

GLADYS HOBSON,

Petitioner

v.

STATE OF CONNECTICUT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF CONNECTICUT

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QUESTION PRESENTED

1. Did the Connecticut Appellate Court unconstitutionally dilute the harmless error doctrine by failing to require the State of Connecticut to prove beyond a reasonable doubt that the erroneous admission of illegally seized evidence against petitioner did not contribute to her conviction?

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The petitioner, GLADYS HOBSON, respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the Appellate Court of the State of Connecticut entered in this proceeding on June 24, 1986.

OPINION BELOW

The opinion of the Appellate Court of the State of Connecticut is reported at 8 Conn. App. 13 (1986) and appears in the appendix hereto. The pertinent part of that decision appears in the appendix hereto at pages 14a-22a.

JURISDICTION

The opinion of the Appellate Court of the State of Connecticut was entered on June 24, 1986. A timely motion to reargue was denied on August 8, 1986, and a timely petition for review of the Appellate Court decision by the Supreme Court of the State of Connecticut was denied on September 24, 1986. This petition for certiorari has been filed within 60 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Did the Connecticut Appellate Court unconstitutionally dilute the harmless error doctrine by failing to require the State of Connecticut to prove beyond a reasonable doubt that the erroneous admission of illegally seized evidence against petitioner did not contribute to her conviction?

CONSTITUTIONAL PROVISION INVOLVED

AMENDMENT IV...The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATUTES INVOLVED

General Statutes §53a-119(8) provides in pertinent part: "A person is guilty of larceny by receiving stolen property if he receives, retains, or disposes of stolen property knowing that it has probably been stolen or believing that it has probably been stolen, unless the property is received, retained or disposed of with purpose to restore it to the owner."

General Statutes §53a-124(a) provides in pertinent part: "A person is guilty of larceny in the third degree when he commits larceny as defined in section 53a-119 and: (1) The value of the property or service exceeds one thousand dollars."

STATEMENT OF CASE

In September 1982, a New Haven police officer obtained a search warrant to authorize the search of Gladys Hobson's home for drugs which the officer believed were being sold by one of Mrs. Hobson's adult sons who lived with her. While executing that warrant, Officer Datillo observed many articles of clothing of differing sized, some with store tags still attached, various kinds of consumer goods, including stereo equipment, five television sets, cameras, projectors and numerous pieces of jewelry in various rooms of the Hobson home. Because of the quantity and diversity of goods, the officer suspected that some of the merchandise was stolen. Through a later computer check the officer determined that

two of the items, a Sony television set and a handgun had been reported stolen. Based on this information, the officer obtained a second warrant authorizing him to search Mrs. Hobson's home and person and to seize only the television set and the gun.

On October 7, 1982 the officer, accompanied by other New Haven police officers, entered the Hobson home to execute the second warrant. The two items, the television and the gun, which were specified in the warrant, the police knew from their previous visit, were located in Mrs. Hobson's bedroom. While in Mrs. Hobson's bedroom, the police saw on or around the Mrs. Hobson's dresser, a pocket watch, a pin, a bracelet, an earring, a few coins and a ring. The

police seized those items.

Despite the fact, that the television and gun, the only two items specified in the warrant, had been found in the Mrs. Hobson's bedroom, the police went on to search several rooms of the home including the attic. They seized 148 items, some of which appeared on their face to be stolen. However, they seized from the attic, a creamer, sugar bowl, gravy ladle and tray. There was nothing about the dresser items or the items seized from the attic which in any way identified them as stolen. The seized items were subsequently displayed at police headquarters and a few of the items were identified as stolen.

Prior to trial, the Hobson moved to suppress all of the physical evidence seized. (App. D), The trial court

denied the motion to suppress. (App. p.3d)

After a trial to the jury, the petitioner was convicted of larceny in the third degree in violation of General Statutes §53a-119(8) and §53a-124.

On appeal, Gladys Hobson contended that the trial Court erred in failing to suppress the television set, the gun, the items taken from her dresser, and the items taken from the attic. The Connecticut Appellate Court ruled that the seizure of the dresser top items comported with the plain view doctrine and was permissible. However, the Appellate Court determined that the search of the attic and the seizure of several items located in the attic, exceeded the scope of the search as authorized in the warrant, and that these items should have been

suppressed by the trial Court. The Appellate Court found, however, that the failure of the trial Court to suppress these items was harmless error. The Appellate Court opined, that since there was expert testimony that the television set, gun and items seized from the dresser top were valued at "approximately $1,042.63," there was sufficient evidence from which the jury could have concluded that the defendant committed larceny in the third degree. (8 Conn. App. 13; App. pp14a-22a) The Appellate Court, therefore, affirmed the conviction.

REASONS FOR GRANTING THE WRIT

THE DECISION OF THE CONNECTICUT APPELLATE COURT CONFLICTS WITH THE DECISION OF THIS COURT IN DELAWARE V. VAN ARSDALL, U.S. , 106 S. Ct. 1431 (1986).

In Delaware v. Van Arsdall, U.S. , 106 S.Ct. 1431 (1986) and in Rose v. Clark, U.S. , 106 S.Ct. 3101 (1986) this Court reaffirmed the principle "that an otherwise valid conviction should not be set aside if the reviewing court may confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt." 106 S.Ct. 1431.

While agreeing with petitioner that the seizure of certain items taken from the attic of her home violated her Fourth Amendment rights, the Connecticut Appellate Court concluded that the

admission of these items in evidence was harmless error. In deciding that this Fourth Amendment error, obviously of constitutional dimension, was harmless error, the Appellate Court failed to properly apply the harmless error standard as promulgated by this Court.

It is well-established that Fourth Amendment violations are subject to harmless error analysis. Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975 (1970); Nevertheless, under Chapman v. California, 386 U.S. 18, 87 S.Ct. 824 (1967) and Harrington v. California, 395 U.S. 250, 89 S.Ct. 1726 (1969) overwhelming evidence of guilt must be present in order for a reviewing court to find that error of constitutional magnitude is harmless. Chapman required that the beneficiary, the

State, of a constitutional error, prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. See Bundy v. Florida, U.S. , 107 S.Ct. (1986) (dissent from denial of petition for certiorari, Brennan, J.) Chapman also required the reversal of a conviction where there was a "reasonable possibility that the evidence complained of might have contributed to the conviction." The Connecticut Appellate Court did not apply either of these standards to the case at bar. Chapman unequivocally required that "before a federal constitutional error can be held harmless, the Court must be able to declare a belief that it was harmless beyond a reasonable doubt." As this Court has made clear, an error in admitting

plainly relevant evidence which possibly influenced the jury adversely to a litigant cannot be conceived of as harmless. Fahy v. Connecticut, 357 U.S. 85, 84 S.Ct. 229 (1963) See Field, Assessing The Harmlessness Of Federal Constitutional Error -- A Process In Need Of A Rationale, 125 U. Pa. L. Rev. 15 (1976). As Professor Field has noted there is language in Chapman supporting the position that "in assessing harmlessness of federal constitutional error, one should focus on the incriminating quality of the erroneously admitted evidence instead of weighing the untainted evidence in the case". See also, Note, 83 Harv. L. Rev. 814, 876 (1970).

Because the Appellate Court failed to make this crucial harmless error analysis,

this Court should grant certiorari to properly apply the principles of Chapman and Harrington.

Furthermore, in deciding that the constitutional error was harmless, the Appellate Court relied on expert testimony to establish that the value of the "properly" seized items was "approximately $1,042.65." On its face, the decision of the Appellate Court fails to establish either the overwhelming evidence of guilt standard or guilt beyond a reasonable doubt. As this Court made clear in Chapman: "We must recognize that harmless-error rules can work unfair and mischievous results when, for example, highly important and persuasive evidence though legally forbidden, finds its way into a trial in which the question of

guilt of innocence is a close one." 386 U.S. 18, 22 In the case at bar, the guilt or innocence of Mrs. Hobson, after the exclusion of the illegally seized items, was by no means a foregone conclusion. The Appellate Court based its harmlessness analysis on the "approximate" valuation of an expert witness who established that the legally seized items may have been worth forty-two dollars more than the statute allowed. Furthermore, the Appellate Court failed to consider the impact on the jury of the cumulative admission of this body of ostensibly stolen items.

As Chief Justice Rehnquist pointed out (albeit in the Sixth Amendment) in Delaware v. Van Arsdall, supra, "Whether such an error is harmless in a particular case depends upon a number of factors,

including the importance of the [illegal evidence], whether the [illegal evidence] was cumulative, the presence or absence of corroborating or contradictory [evidence] on material points, and the overall strength of the prosecution's case." In the case at bar the evidence of guilt was extremely slim; the illegally seized evidence, which the jury was allowed to consider, certainly unconstitutionally contributed to the conviction. It certainly cannot be said that the error was harmless beyond a reasonable doubt.

CONCLUSION

For these reasons, in order to prevent dilution of the harmless error doctrine in the context of the Fourth Amendment, a writ of certiorari should issued to review the judgment and opinion of the Appellate Court of the State of Connecticut.

Respectfully submitted,

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November 21, 1986